

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Brian Johnston and Lanilee Johnston, )  
 )  
 Plaintiffs, )  
 vs. )  
 )  
 Nationstar Mortgage LLC, )  
 )  
 Defendant. )

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Case No.: 2:14-cv-0103-GMN-PAL

**ORDER**

Pending before the Court is the Motion to Dismiss, (ECF No. 38), and the supporting Memorandum of Points and Authorities, (ECF No. 39), filed by Defendant Nationstar Mortgage LLC. Plaintiffs Brian Johnston and Lanilee Johnston filed a Response, (ECF No. 48), to which Defendant replied, (ECF No. 55). For the reasons set forth herein, the Motion will be granted.

**I. BACKGROUND**

This case centers upon Plaintiffs' allegations that Defendant failed to honor the terms of a binding loan modification agreement. (Compl., ECF No. 1).

Plaintiffs allege that they purchased a home on September 9, 2003, and financed approximately \$246,393.00 of its purchase price with a loan from Republic Mortgage, LLC. (*Id.* at ¶ 19). Subsequently, the Complaint states that Bank of America, N.A. assumed the servicing rights to the mortgage loan. (*Id.* at ¶ 20). After Plaintiffs became unable to make their monthly mortgage payments, Plaintiffs executed a loan modification agreement with Bank of America on October 15, 2012. (*Id.* at ¶ 22).

Pursuant to the loan modification agreement, Plaintiffs submitted monthly payments at the newly reduced rate of \$1,527.60, which were allegedly accepted by Bank of America in

1 satisfaction of the agreement's terms. (*Id.* at ¶¶ 23-24). On November 14, 2012, Plaintiffs  
2 received notice that Bank of America had transferred its interest in the mortgage loan to  
3 Defendant. (*Id.* at ¶ 25). When Plaintiffs repeatedly attempted to submit their monthly  
4 mortgage payment in early December 2012, Defendant allegedly stated that it was unable to  
5 process the payment because it did not yet have access to Plaintiffs' loan documents and  
6 account information. (*Id.* at ¶¶ 26, 28, 29).

7 After Plaintiffs transferred \$1,527.60 to Defendant on December 18, 2012, Defendant  
8 sent a notice to Plaintiffs indicating that the payment was insufficient. (*Id.* at ¶¶ 30-31). This  
9 notice also indicated that the outstanding principal balance, required monthly payments, and  
10 interest rate were higher than the corresponding values provided in the loan modification  
11 agreement. (*Id.* at ¶ 31). On January 11, 2013, Defendant allegedly stated that it would not  
12 honor the terms of the loan modification agreement. (*Id.* at ¶ 33).

13 Between February 14, 2013, and December 7, 2013, the Complaint states that Plaintiffs  
14 consistently made monthly payments to Defendant in the amount of \$1,527.60 pursuant to the  
15 terms of the loan modification agreement. (*Id.* at ¶ 36). In response, Defendant allegedly sent  
16 monthly statements containing principal balances, monthly payment amounts, and interest rates  
17 which were inconsistent with the terms of the loan modification agreement. (*Id.* at ¶ 37).  
18 Plaintiffs further allege that Defendant sent numerous letters "demanding ever-increasing  
19 amounts from Plaintiffs to cure their purported default" in addition to attempting to charge  
20 unwarranted property inspection fees, legal fees, and interest. (*Id.*).

21 Plaintiffs filed this action on January 21, 2014. The Complaint sets forth claims for: (1)  
22 Breach of Contract; (2) Breach of Third Party Beneficiary Contract; (3) Breach of the Implied  
23 Covenant of Good Faith and Fair Dealing; and (4) Unjust Enrichment. (Compl. ¶¶ 47-84).

24 In support of its Motion to Dismiss, Defendant claims that it agreed to honor the loan  
25 modification agreement thirteen days before the instant action was filed and subsequently

1 removed all fees associated with its delay in recognizing the agreement. (Mem. of Pts. &  
2 Authorities, ECF No. 39). Therefore, Defendant argues that this action is moot and should be  
3 dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

## 4 **II. LEGAL STANDARD**

5 “Federal courts are courts of limited jurisdiction. They possess only that power  
6 authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.  
7 375, 377 (1994). Therefore, before a federal court may consider the merits of a case, it must  
8 first determine whether it has proper subject matter jurisdiction. *Scott v. Pasadena Unified Sch.*  
9 *Dist.*, 306 F.3d 646, 653-54 (9th Cir. 2002); *see also Ex Parte McCardle*, 74 U.S. 506, 514  
10 (1868) (“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power  
11 to declare the law, and when it ceases to exist, the only function remaining to the court is that of  
12 announcing the fact and dismissing the cause.”).

13 “A claim becomes moot ‘when the issues presented are no longer live or the parties lack  
14 a legally cognizable interest in the outcome.’” *Haro v. Sebelius*, 747 F.3d 1099, 1110 (9th Cir.  
15 2014) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). “Where one of the several  
16 issues presented becomes moot, the remaining live issues supply the constitutional requirement  
17 of a case or controversy.” *Powell*, 395 U.S. at 497.

18 Because mootness pertains to a federal court’s subject matter jurisdiction, it is properly  
19 raised in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). *White v. Lee*, 227  
20 F.3d 1214, 1242 (9th Cir. 2000). “Rule 12(b)(1) jurisdictional attacks can be either facial or  
21 factual.” *Id.* With a factual Rule 12(b)(1) attack, “a court may look beyond the complaint to  
22 matters of public record without having to convert the motion into one for summary judgment.  
23 It also need not presume the truthfulness of the plaintiffs’ allegations.” *Id.* (internal citations  
24 omitted). “Once the moving party has converted the motion to dismiss into a factual motion by  
25 presenting affidavits or other evidence properly brought before the court, the party opposing the

1 motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing  
2 subject matter jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.  
3 2004).

### 4 **III. DISCUSSION**

5 Defendant argues that Plaintiffs lack a legally cognizable interest in the resolution of  
6 their claims because Defendant has agreed to honor the loan modification agreement. In  
7 support, Defendant has submitted an affidavit from its Vice President, Andrew J. Loll, stating  
8 that Defendant agreed to honor the loan modification agreement and retroactively applied its  
9 terms on January 8, 2014. (Loll Affidavit ¶ 19, ECF No. 42-2). By March 6, 2014, Loll states  
10 that Defendant had removed a total of \$3,585.28 in various charges from Plaintiffs’ account,  
11 some of which were incurred as a result Defendant’s initial refusal to recognize the loan  
12 modification agreement. (*Id.* at ¶¶ 20-21). Plaintiffs argue that their claims are not moot,  
13 because: (1) Defendant did not properly credit all of Plaintiffs’ payments or remove all of the  
14 improper fees before this case was filed, and (2) Defendant’s related acts have negatively  
15 impacted Plaintiffs’ credit reports. The Court will address each of these arguments in turn.

16 Though Plaintiffs do not dispute that Defendant agreed to honor the loan modification  
17 agreement, they argue that their claims are not moot because Defendant did not properly credit  
18 their payments or waive its improper fees before this case was filed. (Resp. to Mot. 9:20-23).  
19 However, this argument disregards the fact that a case may be rendered moot not only by  
20 events which occurred prior to the filing of a complaint, but also by subsequent events which  
21 deprive the case of “its character as a present, live controversy.” *See, e.g., Hall v. Beals*, 396  
22 U.S. 45, 48 (1969).

23 Thus, it is not material whether Defendant properly credited all of Plaintiffs’ payments  
24 or waived all improper fees before this case was filed. Plaintiffs do not dispute that Defendant  
25 agreed to honor the loan modification agreement, and they present no evidence indicating that

1 Defendant has acted contrary to the agreement since the filing of this case. Accordingly,  
2 Plaintiffs' assertion that Defendant failed to fully credit Plaintiffs' account before this case was  
3 filed fails to demonstrate that a present, live controversy exists.

4 Plaintiffs also argue that this case is not moot because Defendant previously submitted  
5 several negative reports to credit bureaus, causing financial harm to Plaintiffs. (Resp. to Mot.  
6 10:5-8). However, these allegations do not appear in the Complaint, and thus cannot serve to  
7 create jurisdiction over Plaintiffs' pending claims. Therefore, Plaintiffs have failed to produce  
8 evidence demonstrating that the Court may exercise subject matter jurisdiction over the instant  
9 case. Accordingly, the Motion to Dismiss will be granted.<sup>1</sup>

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that the Motion to Dismiss, (ECF No. 38), is **GRANTED**.

12 **IT IS FURTHER ORDERED** that the Complaint, (ECF No. 1), is **DISMISSED**. The  
13 Clerk shall enter judgment accordingly and close the case.

14 **DATED** this 7th day of April, 2015.

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18 Gloria M. Navarro, Chief Judge  
19 United States District Court  
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<sup>1</sup> In dismissing the instant case, the Court does not rule upon whether Plaintiffs may assert claims against Defendant based on allegations of improper credit reporting.